

1 Schroeder Way, Sparks, Nevada 89431, Parcel No. 027-322-15. (Compl.
2 ¶ 2 (#1-1); Foreclosing Deed of Trust, Ex. I. (#3-9).)¹ The
3 Foreclosing Deed of Trust lists Advantix Lending, Inc. as the lender
4 and Fidelity National Title as the trustee. (Foreclosing Deed of
5 Trust, Ex. I. at 2 (#3-9).) The Foreclosing Deed of Trust allows
6 the lender to foreclose on the property if Plaintiff does not make
7 her loan payments. (Id. ¶ 22.) The Foreclosing Deed of Trust also
8 allows the lender to appoint a substitute trustee. (Id. ¶ 24.) The
9 Foreclosing Deed of Trust also provides that Mortgage Electronic
10 Systems, Inc. ("MERS") as nominee for the lender, has the right to
11 exercise any or all interests including the right to foreclose and
12 sell the property, and to take any action required of the lender.
13 (Id. at 4.)

14 On March 26, 2010, MERS transferred the beneficial interest in
15 the deed of trust to BAC Home Loans Servicing, LP², fka Countrywide
16 Home Loans Servicing, LP. (Assignment, Ex. J. (#3-10).) Plaintiff
17 defaulted on the deed of trust, and ReconTrust, as agent for the
18 beneficiary, filed a Notice of Default and Election to Sell on March
19 26, 2010. (Notice of Default, Ex. L (#3-12).) On March 31, 2010,
20 BAC Home Loans Servicing, LP substituted ReconTrust as the trustee
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23 ¹ Defendants request judicial notice of the deed of trust,
24 substitution of trustee, election to sell, and other such exhibits.
25 Under Federal Rule of Evidence 201, a court may judicially notice
26 matters of public record. Disabled Rights Action Comm. v. Las Vegas
Events, Inc., 375 F.3d 861, 866 n. 1 (9th Cir 2004). Therefore, we
take judicial notice of these public records.

27 ² On July 1, 2011, BAC Home Loans Servicing, LP merged into and
28 with Bank of America.

1 under the Foreclosing Deed of Trust. (Substitution of Trustee, Ex.
2 K (#3-11).)

3 The Nevada Foreclosure Mediation Program issued a Certificate
4 permitting foreclosure to proceed on August 6, 2010. (Certificate,
5 Ex. M (#3-13).) On May 23, 2011, ReconTrust recorded a Notice of
6 Trustee's Sale, noticing a June 13, 2011 sale date. (Notice of
7 Trustee's Sale, Ex. N (#3-14).) The sale was postponed.

8 On June 13, 2011, Plaintiff filed a complaint in state court,
9 alleging nine claims for relief based on variations of wrongful
10 foreclosure. (Comp. (#1-1).) Plaintiff also recorded a Notice of
11 Lis Pendens against the property. (Notice of Lis Pendens, Ex. O
12 (#3-15).)

13 On August 4, 2011, the case was removed to federal court. (Pet.
14 for Removal (#1).) On August 11, 2011, Bank of America as successor
15 by merger to BAC Home Loans Servicing, LP and ReconTrust filed a
16 Motion to Dismiss (#3). On August 25, 2011, Defendant Fidelity
17 National Title filed a Joinder (#8) to the Motion to Dismiss (#3).
18 On August 29, 2011, Plaintiff filed an opposition (#10) to the
19 Motion to Dismiss (#3). On September 16, 2011, Defendants replied
20 (#13) after an extension of time to reply was granted (#14).

21 On November 30, 2011, Plaintiff filed a Notice of Acceptance
22 (#16), purporting to accept an offer of judgment made by Defendant
23 Fidelity National Title Company. On February 10, 2012, in
24 accordance with our Order (#19), Fidelity National Title filed its
25 Offer of Judgment (#20). The Court issued an Order (#21) that
26 Fidelity National Title's Offer of Judgment (#20) is deemed accepted

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1 by Plaintiff, but declined to enter judgment because other
2 defendants remained in the case.

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4 **II. Motion to Dismiss Standard**

5 A motion to dismiss under Federal Rule of Civil Procedure
6 12(b)(6) will only be granted if the complaint fails to "state a
7 claim to relief that is plausible on its face." Bell Atl. Corp. v.
8 Twombly, 550 U.S. 544, 570 (2007); see also Ashcroft v. Iqbal, 129
9 S. Ct. 1937, 1953 (2009) (clarifying that Twombly applies to
10 pleadings in "all civil actions"). On a motion to dismiss, except
11 where a heightened pleading standard applies, "we presum[e] that
12 general allegations embrace those specific facts that are necessary
13 to support the claim." Lujan v. Defenders of Wildlife, 504 U.S.
14 555, 561 (1992) (quoting Lujan v. Nat'l Wildlife Fed'n, 497 U.S.
15 871, 889 (1990)) (alteration in original); see also Erickson v.
16 Pardus, 551 U.S. 89, 93 (2007) (noting that "[s]pecific facts are
17 not necessary; the statement need only give the defendant fair
18 notice of what the . . . claim is and the grounds upon which it
19 rests.") (internal quotation marks omitted). Moreover, "[a]ll
20 allegations of material fact in the complaint are taken as true and
21 construed in the light most favorable to the non-moving party." In
22 re Stac Elecs. Sec. Litig., 89 F.3d 1399, 1403 (9th Cir. 1996)
23 (citation omitted).

24 Although courts generally assume the facts alleged are true,
25 courts do not "assume the truth of legal conclusions merely because
26 they are cast in the form of factual allegations." W. Mining
27 Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Accordingly,
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1 "[c]onclusory allegations and unwarranted inferences are
2 insufficient to defeat a motion to dismiss." In re Stac Elecs., 89
3 F.3d at 1403 (citation omitted).

4 Review on a motion pursuant to Fed. R. Civ. P. 12(b)(6) is
5 normally limited to the complaint itself. See Lee v. City of L.A.,
6 250 F.3d 668, 688 (9th Cir. 2001). If the district court relies on
7 materials outside the pleadings in making its ruling, it must treat
8 the motion to dismiss as one for summary judgment and give the non-
9 moving party an opportunity to respond. FED. R. CIV. P. 12(d);
10 see United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003). "A
11 court may, however, consider certain materials – documents attached
12 to the complaint, documents incorporated by reference in the
13 complaint, or matters of judicial notice – without converting the
14 motion to dismiss into a motion for summary judgment." Ritchie, 342
15 F.3d at 908.

16 If documents are physically attached to the complaint, then a
17 court may consider them if their "authenticity is not contested" and
18 "the plaintiff's complaint necessarily relies on them." Lee, 250
19 F.3d at 688 (citation, internal quotations, and ellipsis omitted).
20 A court may also treat certain documents as incorporated by
21 reference into the plaintiff's complaint if the complaint "refers
22 extensively to the document or the document forms the basis of the
23 plaintiff's claim." Ritchie, 342 F.3d at 908. Finally, if
24 adjudicative facts or matters of public record meet the requirements
25 of Fed. R. Evid. 201, a court may judicially notice them in deciding
26 a motion to dismiss. Id. at 909; see FED. R. EVID. 201(b) ("A
27 judicially noticed fact must be one not subject to reasonable
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1 dispute in that it is either (1) generally known within the
2 territorial jurisdiction of the trial court or (2) capable of
3 accurate and ready determination by resort to sources whose accuracy
4 cannot reasonably be questioned.").

5 6 **III. Discussion**

7 **A. First Cause of Action for Debt Collection Violations**

8 Plaintiff's first cause of action alleges that Defendants
9 violated Nevada Revised Statute 649.370, which provides that any
10 violation of the Federal Fair Debt Collection Practice Act ("FDCPA")
11 is a violation of Nevada law. Plaintiff's claim fails as a matter
12 of law because foreclosure pursuant to a deed of trust does not
13 constitute debt collection under the FDCPA. Camacho-Villa v. Great
14 W. Home Loans, No. 3:10-cv-00210, 2011 WL 1103681 at *4 (D. Nev.
15 Mar. 23, 2011). Therefore, Plaintiff's first claim must be
16 dismissed without leave to amend.

17 **B. Second Cause of Action for Violation of Unfair and Deceptive** 18 **Trade Practice Act**

19 Plaintiff's second cause of action for violation of the Nevada
20 Unfair and Deceptive Trade Practice Act, Nev. Rev. Stat. § 598.0923,
21 also fails as a matter of law. The statute provides that a person
22 engages in deceptive trade practices when he or she knowingly
23 conducts his or her business or occupation without all required
24 state, county, or city licenses. NEV. REV. STAT. § 598.0923(1).
25 However, the statutes explicitly state that the following activities
26 do not constitute doing business in Nevada: (1) maintaining,
27 defending or settling any proceeding; (2) creating or acquiring

1 indebtedness, mortgages and security interests in real or personal
2 property; and (3) securing or collecting debts or enforcing
3 mortgages and security interests in property securing the debts.
4 NEV. REV. STAT. § 80.015(1)(a), (g), (h). Because Defendants are
5 explicitly exempted from the need to acquire licenses, the Court
6 dismisses Plaintiff's second cause of action without leave to amend.

7 **C. Third Cause of Action for Violation of Unfair Lending**
8 **Practices**

9 Plaintiff's third cause of action for unfair lending practices
10 in violation of Nev. Rev. Stat. § 598D is time-barred. The statute
11 of limitations for "[a]n action upon a liability created by statute"
12 is three years. NEV. REV. STAT. § 11.190(3)(a). Plaintiff obtained
13 the loan at issue in April 2007, and filed this action in June 2011.
14 Plaintiff's claim for unfair lending practices is therefore untimely
15 and must be dismissed without leave to amend.

16 **D. Fourth Cause of Action for Violation of the Covenant of Good**
17 **Faith and Fair Dealing**

18 Plaintiff's fourth cause of action for breach of the covenant
19 of good faith and fair dealing also fails as a matter of law. In
20 Nevada, "[e]very contract imposes upon each party a duty of good
21 faith and fair dealing in its performance and execution." A.C. Shaw
22 Constr. v. Washoe Cty., 784 P.2d 9, 9 (Nev. 1989) (quoting
23 Restatement (Second) of Contracts § 205). This duty requires each
24 party not to do anything to destroy or otherwise injure the rights
25 of the other to receive the benefits of the contract. Hilton Hotels
26 Corp. v. Butch Lewis Prods., Inc., 808 P.2d 919, 923 (Nev. 1991).
27 To prevail on a cause of action for breach of the covenant of good
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1 faith and fair dealing, a plaintiff must show that (1) the plaintiff
2 and defendant were parties to a contract; (2) the defendant owed
3 plaintiff a duty of good faith and fair dealing; (3) the defendant
4 breached the duty by performing in a manner unfaithful to the
5 purpose of the contract; and (4) the plaintiff's justified
6 expectations were denied. Perry v. Jordan, 900 P.2d 335, 338 (Nev.
7 1995) (citing Hilton Hotels, 808 P.2d at 922-23).

8 Plaintiff asserts that Defendants breached the covenant of good
9 faith and fair dealing because Defendants "offered the Plaintiff
10 consideration for loan modifications, told her that the foreclosures
11 would be postponed but they were not." (Compl. ¶ 86 (#1-1).)
12 Because there is no loan modification contract, and because none of
13 these actions, even if true, contravene the intention or spirit of
14 any existing contracts between Plaintiff and Defendants, Plaintiff's
15 claim for breach of the covenant of good faith and fair dealing must
16 be dismissed without leave to amend.

17 **E. Fifth Cause of Action for Violation of Nev. Rev. Stat. §**
18 **107.080 et seq.**

19 Plaintiff's fifth cause of action, violation of Nev. Rev. Stat.
20 § 107.080 et seq., appears to allege that Defendants foreclosed
21 without authority to do so under Nev. Rev. Stat. § 107.080, which we
22 construe to be a claim for wrongful foreclosure based on violation
23 of state recording and foreclosure statutes. Specifically, Plaintiff
24 alleges that Defendants had no right to foreclose because they have
25 not produced the original note to prove the identity of the real
26 party in interest.

27 In general:

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1 [W]rongful foreclosure will lie if the trustor or mortgagor
2 can establish that at the time the power of sale was
3 exercised or the foreclosure occurred, no breach of
4 condition or failure of performance existed on the
5 mortgagor's or trustor's part which would have authorized
6 the foreclosure or exercise of the power of sale.

7 Collins v. Union Fed. Sav. & Loan Ass'n, 662 P.2d 610, 623 (Nev.
8 1983); see also Cervantes, 656 F.3d at 1044 (plaintiffs cannot state
9 a claim for wrongful foreclosure while in default). "Even if MERS
10 were a sham beneficiary, the lenders would still be entitled to
11 repayment of the loans and would be the proper parties to initiate
12 foreclosure after the plaintiffs defaulted on their loans."
13 Cervantes, 656 F.3d at 1044. Because Plaintiff admits that he is in
14 default (Opp. Mot. Dismiss at 14 (#20)), Plaintiff has not satisfied
15 the requirements for bringing a general claim for wrongful
16 foreclosure.

17 Nevada Revised Statutes § 107.080 provides that the power of
18 sale in real property may not be exercised until:

19 The beneficiary, the successor in interest of the
20 beneficiary or the trustee first executes and causes to be
21 recorded in the office of the recorder of the county
22 wherein the trust property, or some part thereof, is
23 situated a notice of the breach and of the election to
24 sell or cause to be sold the property to satisfy the
25 obligation.

26 NEV. REV. STAT. § 107.080 2(c). The "Notice of Default/Election to
27 Sell Under Deed of Trust" was signed by ReconTrust as agent for the
28 beneficiary. (Notice of Sale, Ex. L (#3-12).) ReconTrust was not
formally substituted as the foreclosure trustee until after it
issued the notice of sale. (Substitution of Trustee, Ex. K (#3-11).
This timeline, however, appears to be fairly common and not improper
in foreclosure.

1 In Karl v. Quality Loan Service Corp., this district noted that
2 Quality was neither the trustee nor the beneficiary when it recorded
3 the notice of default, but claimed on the notice of default to be
4 the agent for the beneficiary. 759 F.Supp.2d 1240, 1246 (D. Nev.
5 2010). The court in Karl stated that "[a]lthough MERS is not a
6 beneficiary, its agency for the beneficiary under the [deed of
7 trust] extends to administering the [deed of trust] for purposes of
8 foreclosure." Id. The court further stated that:

9 [T]here is no defect in foreclosure here under section
10 107.080(2)(c), as there is in cases where a purported
11 trustee who is named nowhere on the [deed of trust], and
12 for whom evidence of substitution as trustee appears
13 nowhere, files a [notice of default]. . . . There is no
question of fact that [Quality] filed the [notice of
default] as the agent of MERS, who was the agent of the
beneficiary UAMC, and the foreclosure was therefore not
improper under section 107.080(2)(c).

14 Id. No party on whose behalf agency was claimed has come forth
15 disputing that fact. Furthermore, ReconTrust's formal substitution
16 as trustee after signing the notice as an agent appears to show, at
17 the least, ratification of the previously-claimed agency.

18 In Cervantes v. Countrywide Home Loans, Inc., the Ninth Circuit
19 considered wrongful foreclosure claims based on alleged procedural
20 defects. 656 F.3d 1034, 1044 (9th Cir. 2011).³ The Ninth Circuit
21 held that "[e]ven if we were to accept the plaintiffs' premises that
22 MERS is a sham beneficiary and the note is split from the deed, we
23 would reject the plaintiffs' conclusion that, as a necessary
24 consequence, no party has the power to foreclose." Id. Plaintiff's

26 ³ The Ninth Circuit case reviewed a case brought under Arizona
27 law. The conclusions of the Ninth Circuit, however, are equally
28 applicable under Nevada law.

1 arguments that Nevada's foreclosure statutes were violated by the
2 facts that the note was never presented, the note was split from the
3 deed, and other similar arguments have been repeatedly rejected in
4 this Court, and shall be dismissed without leave to amend.⁴

5 **F. Sixth Cause of Action to Quiet Title**

6 Plaintiff's sixth cause of action is for quiet title. In
7 Nevada, a quiet title action may be brought "by any person against
8 another whom claims an estate or interest in real property, adverse
9 to the person bringing the action, for the purpose of determining
10 such adverse claim." NEV. REV. STAT. § 40.010. "In a quiet title
11 action, the burden of proof rests with the plaintiff to prove good
12 title in himself." Breliant v. Preferred Equities Corp., 918 P.2d
13 314, 318 (Nev. 1996). "Additionally, an action to quiet title
14 requires a plaintiff to allege that she has paid any debt owed on
15 the property." Lalwani v. Wells Fargo Bank, N.A., No. 2-11-cv-
16 00084, 2011 WL 4574388 at *3 (D. Nev. Sep. 30, 2011) (citing
17 Ferguson v. Avelo Mortg., LLC, No. B223447, 2011 WL 2139143 at *2
18 (Cal. App. 2d June 1, 2011). Plaintiff has failed to allege that
19 she is not in breach of the loan agreement. While Plaintiff does
20 not expressly admit to being in default on the loan, the complaint,
21 read as a whole, and taking all allegations in favor of Plaintiff,
22 does not show even the barest hint of a dispute over whether

23
24 ⁴ To the extent that Plaintiff's claim is not a wrongful
25 foreclosure claim, Plaintiff has failed to state a claim upon which
26 relief may be granted. "NRS 107.080 does not provide plaintiff
27 homeowners with a private right of action for tort damages." Berilo
28 v. HSBC Mortg. Corp., USA, No. 2:09-cv-02353-RLH-PAL, 2010 WL 2667218,
at *3 (D. Nev. June 29, 2010).

1 Plaintiff was in default. Rather, Plaintiff is challenging the
2 procedure with which foreclosure was initiated against her, not that
3 the loan was not in default. Accordingly, the quiet title claim
4 must be dismissed without leave to amend.

5 **G. Seventh Cause of Action for Fraud in the Inducement and**
6 **Through Omission**

7 Plaintiff claims that Defendants committed fraud in the
8 inducement by luring Plaintiff into the loan under false pretenses,
9 that is, by declaring her qualified for the loan based upon future
10 equity in the home and not from income or other assets. In order to
11 state a claim for fraud in the inducement, a plaintiff must show
12 that the defendant knowingly made a false representation with the
13 intent to induce the plaintiff to consent to the contract's
14 formation. J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.,
15 89 P.3d 1009, 1017 (Nev. 2004).

16 Defendants were under no obligation to disclose the risks of
17 the loan and whether Plaintiffs could afford it:

18 Although the Nevada Supreme Court has not ruled on the
19 issue, this Court and the Ninth Circuit Court of Appeals
20 have predicted that the Nevada Supreme Court would hold
21 that a lender does not owe a fiduciary duty, as "an arms-
length lender-borrower relationship is not fiduciary in
nature, absent exceptional circumstances."

22 Megino v. Linear Financial, No. 2:09-CV-00370, 2011 WL 53086 at *5
(D. Nev. Jan. 6, 2011) (quoting Yerington Ford, Inc. v. Gen. Motors
23 Acceptance Corp., 359 F.Supp.2d 1075, 1090 (D.Nev. 2004), overruled
24 on other grounds by Giles v. Gen. Motors Acceptance Corp., 494 F.3d
25 865 (9th Cir. 2007)); see also Renteria v. United States, 452
26 F.Supp.2d 910, 922-23 (D. Ariz. 2006) (holding that borrowers cannot
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1 establish the reliance element of their claim because lenders have
2 no duty to determine the borrower's ability to repay the loan); Oaks
3 Mgmt. Corp. v. Superior Court of San Diego Cty., 51 Cal. Rptr. 3d
4 561, 570 ("[A]bsent special circumstances . . . a loan transaction
5 is at arms-length and there is no fiduciary relationship between the
6 borrower and the lender.") (citations omitted).

7 Furthermore, a party alleging fraud "must state precisely the
8 time, place, and nature of the misleading statements,
9 misrepresentations, and specific acts of fraud." Kaplan v. Rose, 49
10 F.3d 1363, 1370 (9th Cir. 1994). Because a claim for fraud in the
11 inducement cannot depend upon Plaintiff's allegations, Plaintiff's
12 claim for fraud in the inducement must be dismissed. Nor has
13 Plaintiff shown that there are any facts upon which a proper fraud
14 claim may be brought against Defendants, and therefore, Plaintiff
15 shall not be granted leave to amend this claim.

16 Plaintiff also alleges fraud by omission. Under Nevada law, a
17 claim for fraudulent concealment must plead that defendant concealed
18 or suppressed a material fact that he or she was under a duty to
19 disclose to the plaintiff. Nev. Power Co. v. Monsanto Co., 891 F.
20 Supp. 1406, 1415 (D. Nev. 1995) (citing Nevada Jury Instruction
21 9.03). Like many of Plaintiff's claims, this claim fails on its
22 face because it is well-settled that lenders and servicers owe no
23 fiduciary duties to mortgage borrowers. Megino, 2011 WL 53086 at *5
24 (quoting Yerington Ford, 359 F.Supp.2d at 1090, overruled on other
25 grounds by Giles, 494 F.3d 865; see also Kwok v. Recontrust Co., No.
26 2:09-cv-02298, 2010 WL 255615, at *5 (D. Nev. June 23, 2010); Saniel
27 v. Recontrust Co., No. 2:09-cv-2290, 2010 WL 2555625, at *5 (D. Nev.

1 June 23, 2010); Renteria, 452 F.Supp.2d at 922-23 (holding that
2 borrowers cannot establish the reliance element of their claim
3 because lenders have no duty to determine the borrower's ability to
4 repay the loan); Oaks Mgmt. Corp., 51 Cal. Rptr. 3d at 570.

5 Plaintiff's allegations in support of these claims are vague
6 and conclusory, asserting only that Defendants failed to disclose
7 certain facts about the inner workings of the mortgage industry,
8 that Plaintiffs were not qualified for the loans, and that
9 Defendants had no right to foreclose on Plaintiffs' property.
10 Moreover, Plaintiff cannot show that Defendants owed him a duty to
11 disclose these alleged facts. For this reason, Plaintiff's claim
12 for fraud through omission must be dismissed without leave to amend.

13 **H. Eighth Cause of Action for Slander of Title**

14 Plaintiff's eighth cause of action is slander of title against
15 ReconTrust, BAC Home Loans Servicing, LP, First American Title
16 Insurance Company, and Charlotte Olmos. Plaintiff asserts that
17 Defendants "disparaged the title to the Plaintiff's properties
18 pursuant to recording Notices of Default that were defective"
19 because Defendants did not have the authority to record those
20 notices, and did not serve those notices upon Plaintiff. (Compl. ¶
21 150 (#1-1).)

22 To succeed on a slander of title claim, a plaintiff must show
23 "false and malicious communications, disparaging to one's title in
24 land, and causing special damages." Exec. Mgmt., Ltd. v. Ticor
25 Title Co., 963 P.2d 465, 478 (Nev. 1998). However, Plaintiff has
26 failed to state a claim because it is undisputed that Plaintiff is
27 in default. See Sexton v. IndyMac Bank FSB, No. 3:11-cv-437, 2011

1 WL 4809640, at *5 (D. Nev. Oct. 7, 2011); Ramos v. Mortg. Elec.
2 Registrations Sys., Inc., No. 2:08-CV-1089, 2009 WL 5651132, at *4
3 (D. Nev. Mar. 5, 2009) (dismissing slander of title claim where
4 Plaintiffs failed to dispute that they were in default on their
5 loan, nor was it false that the property was to be sold at a
6 trustee's sale). In filing the Notice of Default, Defendants stated
7 that Plaintiff was in breach of the loan agreement due to
8 nonpayment. Plaintiff does not dispute that she is in fact in
9 default. Because the statement is not false, Defendants cannot be
10 liable for slander of title. Leave to amend to include a slander of
11 title claim will therefore be denied as futile.

12 **I. Ninth Cause of Action for Abuse of Process**

13 Plaintiff's claim for abuse of process fails as a matter of law
14 because non-judicial foreclosure is not the type of "process"
15 addressed by the abuse of process tort as it does not involve
16 judicial action. Riley v. Greenpoint Mortg. Funding, Inc., No.
17 2:10-cv-01873, 2011 WL 1979831 at *5 (D. Nev. May 20, 2011); see
18 also Barlow v. BNC Mortg., Inc., No. 3:11-CV-0304, 2011 WL 4402955
19 at *4 (D. Nev. Sept. 21, 2011) ("[T]he process at issue in this
20 action is a non-judicial foreclosure which is not the characteristic
21 legal action contemplated by an abuse of process claim . . .
22 Therefore, the court finds that [Plaintiff] has failed to state a
23 claim for abuse of process.") (citation omitted). Accordingly,
24 Plaintiff's claim for abuse of process shall be dismissed without
25 leave to amend.

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1 **J. Defendants' Request to Expunge the Lis Pendens**

2 Nevada statutory law allows a Notice of Pendency or a Lis
3 Pendens to be filed for an action pending in the United States
4 District Court for the District of Nevada when there is "a notice of
5 an action affecting real property, which is pending," in any such
6 court. NEV. REV. STAT. § 14.010(2). As this Order dismisses this
7 action, Defendants request to expunge lis pendens is granted. See
8 McKinnon v. IndyMac Bank F.S.B., No. 2:11-CV-00607-KJD-GWF, 2012 WL
9 194426, at *5 (D.Nev. Jan. 23, 2012) (granting motion to expunge lis
10 pendens after dismissing all claims).

11
12 **IV. Conclusion**

13 Because Plaintiff's claims are deficient against all defendants
14 in this action, and leave to amend would be futile, the action must
15 be dismissed with prejudice.

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17 **IT IS, THEREFORE, HEREBY ORDERED** that Defendants' Motion to
18 Dismiss (#3) is **GRANTED**. Plaintiff's claims shall be **DISMISSED** with
19 prejudice.

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21 **IT IS FURTHER ORDERED** that Defendants' request to expunge lis
22 pendens in the Motion to Dismiss (#3) is **GRANTED**.

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24 **IT IS FURTHER ORDERED** that in accordance with the Offer of
25 Judgment (#20) and the Notice of Acceptance (#16), judgment shall be
26 entered against Fidelity National Title in the amount of TEN DOLLARS
27 AND ZERO CENTS (\$10.00), each party to bear their own attorneys'

1 fees and costs. The judgment is not to be construed as an admission
2 that Fidelity National Title is liable in this action.

3 The Clerk shall enter judgment accordingly.

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6 DATED: March 21, 2012.

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8 UNITED STATES DISTRICT JUDGE